

EXHIBIT E

Massachusetts Department of Environmental Protection's Conditional Approval Letters for PEDAs Conditional Exception Requests for Water Quality Basin

Letter dated April 7, 2009

Letter dated September 3, 2009



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WESTERN REGIONAL OFFICE

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April 7, 2009

Mr. William Hines
President, Board of Directors
Pittsfield Economic Development Authority
81 Kellogg Street
Pittsfield, Massachusetts 01201

Re: Pittsfield; GECD120; 20s, 30s and 40s Complexes
Conditional Approval - Conditional Exception Request for Water Quality Basin/Net Cuts in 30s
Complex and Soil Transfer from 30s to 20s

Dear Mr. Hines:

The Department of Environmental Protection (MassDEP) has reviewed the following documents titled Conditional Exception Requests for Water Quality Basin/Net Cuts in the 30s Complex and Soil Transfer from 30s to 20s (dated February 17, 2009) and Conditional Exception Requests for Water Quality Basin/Net Cuts in the 30s Complex and Soil Transfer from 30s to 20s (dated March 18, 2009). Both documents were prepared by O'Reilly, Talbot and Okun Associates, Inc., on behalf of the Pittsfield Economic Development Authority (PEDA). The first document addresses comments and deficiencies identified in MassDEP's February 10, 2009 letter. The second document addresses additional issues identified during the March 5 meeting between the MassDEP, PEDA and the U.S. Environmental Protection Agency (EPA). After consultation with the EPA, MassDEP is approving PEDA's request for a Conditional Exception to the Grant of Environmental Restriction and Easements (ERE) for the 30s Complex to create net cuts in the 30s Complex (including the creation of a Water Quality Basin, forebays and associated Storm-water Management Area.) and to perform soil transfer from the 30s Complex to the 20s Complex.

This Conditional Exception request encompasses numerous activities that together require both amendments to and conditional exceptions from the existing ERE on the 30s Complex property. Some of the work proposed is specifically prohibited by the ERE. However, after consultation with EPA and discussions with PEDA, MassDEP has determined that the proposed activities can be conditionally approved as a Conditional Exception pursuant to paragraph 6 of the ERE in order to enable PEDA to proceed with its plans in an efficient and cost-effective manner while still ensuring the protectiveness and integrity of the response actions at the property. This approval is subject to the condition that upon completion of the proposed activities, PEDA shall implement an amendment to the existing ERE for the 30s Complex to reflect new conditions at the property and new restrictions on site activities and uses, as detailed below in Condition 13. Therefore, MassDEP, in an exercise of its discretion, will allow these proposed activities to proceed as Conditional Exceptions and will not require PEDA to amend the ERE for the 30s Complex prior to commencing work. This exercise of discretion should not be considered a

precedent for any further or future actions and should not be considered applicable to any activities except as specifically approved herein.

General Conditions

1. The Performance Standards for the 30s Complex allow average polychlorinated biphenyl (PCB) concentrations of 25 parts per million (ppm) and a Not-to-Exceed (NTE) concentration of 125 ppm in soils within the 0- to 1-foot depth increment, average PCB concentrations of 200 ppm in the 1- to 6-foot depth increment, and average PCB concentrations of 100 ppm in the 0- to 15-foot depth increment (Table 1). These standards were based on an assessment of human-health risk associated with commercial uses of the property and did not take into consideration the potential for future large changes in site grading that might result in a threat of migration of contaminants to the adjacent surface waters of Silver Lake. The agencies commend PEDDA on its efforts to modify the design of certain components of its Storm-water Management Area in order to minimize the erosion potential of these areas. However, due to storm-water treatment requirements, the floor and walls of the Water Quality Basin cannot be lined or protected with riprap. In addition, grading plans indicate that the outfall culvert will be flowing even during periods of low groundwater, thereby providing a continuous hydraulic connection between the basin and Silver Lake. PCB sampling data for the basin and forebay area indicates that most soil concentrations are very low (i.e., less than 1 ppm to non-detect). However, elevated concentrations were found at sampling location BH000462 in the southwestern end of the basin (99 ppm in the 0- to 1-foot depth interval and 23 ppm in the 1- to 6-foot depth interval) and RAA2-17 on the western side of the northern forebay (62 ppm in the 6- to 15-foot depth interval). It is possible that similar concentrations may be encountered when samples from the 2-foot interval surrounding the basin bowl are analyzed. The agencies are concerned that, during and post-construction, material eroded from these areas and making its way into Silver Lake, may interfere with the integrity of any response actions in Silver Lake, create pathways of contaminant migration and pose an unacceptable risk to the environment if eroded materials exceed certain average concentrations of PCBs.

Therefore, the agencies have determined that, post-construction, the portions of the Water Quality Basin Area (including forebays), located below elevation 978 shall achieve a spatially-weighted average PCB concentration of 1 ppm and a maximum PCB concentration of 10 ppm. Furthermore, portions of the Water Quality Basin Area (including forebays), located between elevations 978 and 984, shall achieve a spatially-weighted average PCB concentration of 10 ppm and a maximum PCB concentration of 50 ppm. Following construction of the Water Quality Basin and forebays and performance of post-construction sampling, PEDDA will be required to remove and replace whatever soils are necessary in these areas in order to meet these concentration requirements (Table 2). In addition, regardless of the sampling results, if, during construction of the Water Quality Basin, visual signs of contamination are observed, the agencies may require that additional response actions be performed.

2. In addition to the concentration requirements specified above, approval to construct the Water Quality Basin and forebays is also contingent on performance of maintenance activities described in Condition 13 below.
3. MassDEP's approval of PEDDA's Conditional Exception request and the Performance Standards for the 30s Complex do not constitute a permit or a modification of any existing permit under the state and federal Clean Water Acts. PEDDA needs to be cognizant of the fact that a National Pollution Discharge Elimination System (NPDES) Permit or other type of permit may be required for the basin's outfall to Silver Lake and that, pursuant to the state and federal Clean Water Acts, the

agencies may require additional actions, such as sampling of the outfall effluent, achieving limits on contaminants in the effluent, best management practices, elimination of dry-weather flows, and/or further soil removal.

4. The agencies understand that PEDa is in frequent consultation with the General Electric Company (GE) concerning ongoing site activities. Nevertheless, PEDa shall notify EPA, MassDEP and GE if any groundwater monitoring wells are compromised, damaged or removed during PEDa's work at the site. GE is responsible for reinstalling all wells post-construction. PEDa shall coordinate with GE, EPA and MassDEP to identify and replace all wells damaged or removed during construction.
5. PEDa shall comply with all applicable local, state and federal ordinances, laws and regulations. PEDa shall also obtain all required permits, including, without limitation, storm-water construction permits and approvals from the Pittsfield Conservation Commission.
6. During construction and prior to achieving a permanent, stable vegetative cover within the areas of the 30s and 20s Complexes covered by this Conditional Exception approval, PEDa shall implement whatever dust-control measures are necessary to prevent fine soil particles from becoming suspended as dust the site, particularly during periods of dry weather.
7. All of PEDa's work shall comply with the Soil Management Protocol contained in the ERE or other similar requirements. Furthermore, PEDa is required to leave the 30s Complex in a stable condition at the completion of the work described in the Conditional Exception request, including placing topsoil and seeding the area, so that a permanent vegetative cover is achieved.
8. The Conditional Exception request does not specifically state how the new PCB and Appendix IX+3 data will be evaluated to demonstrate how the Performance Standards will be met in the General Commercial Area portion of the 30s. MassDEP recommends that following completion of the proposed post-construction sampling, PEDa conduct arithmetic averages of all of the new data that is available for these areas, taking into account the proposed new grades and associated depth intervals. If the average PCB concentrations in these areas exceed 25 ppm in the top 6 feet or 100 ppm in the 0- to 15-foot depth increment, then PEDa shall be required to perform spatially-weighted averaging for the entire General Commercial Area portion of the site, using both new and existing data, to demonstrate that the Performance Standards are being met. PEDa will also have to demonstrate that there are no NTE concentrations of 125 ppm for PCBs in the top 6 feet of soil in the General Commercial Area, as described below.

To allow greater flexibility in the permitted uses at the site, the EREs created additional PCB concentration requirements for the top 6 feet in the General Commercial Area of the 30s Complex. These are: an average PCB concentration of 25 ppm and an NTE concentration of 125 ppm. If PEDa wishes to retain the flexible ERE requirements in the General Commercial Area of the 30s that allows for unrestricted excavation, mixing and backfilling of the top six feet of soil, *with the condition that all areas are backfilled to the existing grades (See Section 4B of the ERE)*, then the data from the proposed post-construction sampling in net-cut areas in the 1- to 6-foot depth interval must also meet the Performance Standards for the 0- to 1-foot depth interval for the General Commercial Area. Otherwise, PEDa can: a) perform additional response actions to achieve the 0- to 1-foot Performance Standards in the 1- to 6-foot depth interval; or, b) the post-construction ERE for 30s will be revised to limit subsequent excavation and backfilling in the General Commercial Area as described in the current 20s ERE.

PEDA shall also evaluate all new Appendix IX+3 data according to the Performance Standards contained in the EREs (paragraph 14 of the Soil Management Protocol) as described in PEDA's 2nd Revised Soil Sampling Plan, 30s Complex Post-Construction. If PEDA cannot demonstrate that site-wide PCB or Appendix IX+3 constituents meet the Performance Standards in the General Commercial Area, then PEDA will be required to conduct additional remedial actions.

9. PEDA shall evaluate all new Appendix IX+3 data for the Water Quality Basin and forebays according to the Performance Standards contained in the Soil Management Protocol. If the concentrations of any Appendix IX+3 constituents exceed the Performance Standards specified in the protocol, then PEDA shall propose remedial actions to address these exceedances. (NOTE: The PCB concentration requirements for the Water Quality Basin are addressed in Condition 1 and in Table 2.)
10. Soil associated with sample location BH000462 shall not be used to backfill utility trenches unless PEDA demonstrates that the average concentration for the entire trench will be 25 ppm or less when this sample is included.
11. Tables 1 through 3 in Appendix A should replace those contained in PEDA's recent submissions.
12. PEDA's Post-development Sampling Plan shall be revised to contain the following components:
 - PEDA shall provide the agencies with 7 days notice prior to the actual date of the sampling.
 - PEDA shall submit a report within 45 days of the collection of the samples that summarizes the data, compares the data to applicable Performance Standards, and, if necessary, proposes additional response actions to meet the applicable Performance Standards.
 - PEDA shall utilize a sampling and analysis plan/quality assurance plan that describes the sampling methods, the analytical methods, QA/QC procedures, and the proposed laboratory and its standard operating procedures. The agencies recommend utilizing General Electric's approved plan titled *Field Sampling Plan/Quality Assurance Project Plan*, dated March 2007 and prepared by ARCADIS BBL. Alternatively, PEDA may produce its own sampling and analysis plan/quality assurance plan which must be submitted for MassDEP approval a minimum of 30 days prior to the collection of samples.

Requirements Concerning ERE Amendments

13. As conditions of MassDEP's approval of the Conditional Exception Request, PEDA shall perform the following activities related to the EREs:
 - Revise the Survey Plan for the 30s Complex ERE to show the outline of the 984 elevation mark within the Water Quality Basin and forebays. The revised Survey Plan should also include the new outline of the General Commercial Area and the location of any monitoring wells.
 - Provide revised the metes and bounds descriptions to replace Exhibit A in the ERE.
 - Provide new ERE language for the 30s ERE for a permitted activity and use for the 0- to 2-foot depth interval surrounding the new Water Quality Basin and forebays. Add definitions for the terms "Water Quality Basin" and "Forebays" to Paragraph 2 of the ERE.

- Submit to both MassDEP and EPA a revised as-built topographical survey plan of the post-construction conditions at the 30s Complexes using a 1-foot contour interval.
- An Inspection, Monitoring and Maintenance plan shall be included in the amended ERE that will describe, at a minimum, the proper removal of sediment from the forebays and the Water Quality Basin and inspection and maintenance actions to ensure that damage caused to the floors and sidewalls of the Water Quality Basin and forebays, from falling trees, storms, accidents, etc., gets repaired and stabilized promptly and properly to minimize erosion.
- Revise subparagraph 5.C of the ERE to reference the new topographical survey plan.
- Provide a revised data compilation report for the 30s that contains all new data and all existing data that is still valid (i.e., data for original soil that remains unexcavated.)
- Obtain subordinations for the ERE Amendments from the same parties that subordinated before, plus any new interest holders.

The Amended ERE for the 30s Complex shall be submitted to the agencies for MassDEP's review and approval prior to being recorded or/or registered, and shall not be recorded and/or registered until MassDEP's written approval is received by PEDDA.

If you have any questions concerning this letter, please contact me at (413) 755-2295 or Susan Steenstrup at (413) 755-2264.

Sincerely,



Eva V. Tor
Deputy Regional Director
Bureau of Waste Site Cleanup

cc: Barbara Landau, Noble & Wickersham LLP
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Table 3
Additional ERE-related PCB Concentration Requirements for Disposition in the 30s/20s
Complexes of Soil Excavated from the 30s Complex

Average PCB Concentration (ppm)	Maximum PCB Concentration (ppm)	Disposition Requirements for Excavated Soil
<25 ppm	<25 ppm	Anywhere in 30s or 20s
<25 ppm	>25 ppm & <125 ppm	Below 1 foot in 30s or 20s
<25 ppm	>125 ppm	Below 6 feet in 30s or Below 1 foot in 20s
>25 ppm & <100 ppm	N/A	Below 6 feet in 30s, but not in utility corridors or Below 1 foot in 20s, but not in utility corridors
>100 ppm	N/A	Off-site Disposal Required



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September 3, 2009

Mr. William Hines
President, Board of Directors
Pittsfield Economic Development Authority
81 Kellogg Street
Pittsfield, Massachusetts 01201

Re: Pittsfield; GECD120; 20s, 30s and 40s Complexes
Conditional Approval - Conditional Exception Request - Water Quality Basin, 30s
Complex Site Development Work Plan

Dear Mr. Hines:

The Department of Environmental Protection (MassDEP) has reviewed the document titled *Conditional Exception Request - Water Quality Basin, 30s Complex Site Development Work Plan*, dated August 21, 2009, prepared by CHA on behalf of the Pittsfield Economic Development Authority (PEDA). This conditional exception request was prepared in response to MassDEP's July 7, 2009 correspondence requiring review of historical data and assessment of non-aqueous phase liquid (NAPL) observed in the southeastern portion of the water quality basin during basin construction. A series of technical meetings between PEDA, PEDA's consultants, MassDEP, and EPA have been held since the discovery of NAPL to review the results of the historical data review and NAPL assessment and to review the impact of these data on the design of the water quality basin.

In a technical meeting held on August 26, 2009 the agencies expressed concern over PEDA's ability to comply with the future National Pollutant Discharge Elimination System (NPDES) permit for discharge of polychlorinated biphenyls (PCBs) in the outfall. PCB levels ranging from 0.13 to 0.22 micrograms per liter ($\mu\text{g/l}$) were discovered in preliminary surface water samples taken from the basin. The hydraulic connection between groundwater from the site and Silver Lake may provide a pathway for PCBs to be discharged to the lake. PEDA responded to these concerns in a letter dated September 2, 2009 that they understand their requirements to comply with current and future NPDES permit limits at the outfall and that corrective action will be required if permit limits are exceeded in the future.



In terms of addressing the presence of NAPL, PEDDA proposes to maintain the current permanent pool design limits with the following modifications aimed at isolating oil-contaminated soil:

- over-excavation of oil-contaminated soil to a depth of two feet below design grade within the southeastern portion of the permanent pool and backfill of this area with crushed concrete generated from on site
- filling the south forebay with natural stone to raise the elevation to 978 feet

After consultation with EPA, MassDEP conditionally approves PEDDA's plan subject to the following conditions:

1. Soil from the over-excavation of the permanent pool shall not be transported for placement within the 20s Complex if NAPL saturation is evident. NAPL saturated soil shall be segregated and placed on and covered with impermeable material pending subsequent off-site disposal.
2. If NAPL saturated soil or a visible sheen is observed within remaining areas to be excavated, outside the proposed area of over-excavation within the permanent pool, PEDDA shall cease construction within those areas and shall notify MassDEP of the presence of additional NAPL consistent with the Soil Management Protocol contained within the Grant of Environmental Restriction and Easement for the 30s Complex.
3. If a visible sheen is observed at any point after completion of the basin, PEDDA shall notify MassDEP and will be required to undertake corrective actions to determine the source of the NAPL and implement actions to prevent the release of impacted surface water to Silver Lake.
4. In the area subject to over-excavation and replacement with two feet of fill, PEDDA shall install a minimum of six-inches of material consistent with the requirements of the Silver Lake cap that will be installed by General Electric. That is, a granular material with a minimum of 0.5% total organic carbon.
5. PEDDA is required to meet all conditions specified in MassDEP's April 7, 2009 letter regarding PEDDA's Conditional Exception Request for Water Quality Basin/Net Cuts in 30s Complex and Soil Transfer from 30s to 20s.
6. PEDDA shall submit a report to MassDEP detailing the historical data (provided by General Electric) and all of PEDDA's subsequent investigation activities. The agencies have reviewed most of this information with PEDDA as it was generated, but the information has not yet been formalized in a report. PEDDA is not required to submit this report prior to initiating planned work on the basin, but shall submit the final report to MassDEP no later than November 6, 2009. Any new information regarding nature and extent of NAPL that is discovered during the work shall be included in this report.

If you have any questions concerning this letter, please contact John Ziegler at (413) 755-2228 or me at (413) 755-2295.

Sincerely,



Eva V. Tor
Deputy Regional Director
Bureau of Waste Site Cleanup

cc: James Gagnon, O'Reilly, Talbot & Okun
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